



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

April 30, 2018

Administrator Scott Pruitt
United States Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

RE: Docket ID: No. EPA—HQ—OLEM-2017-0286
Hazardous and Solid Waste Management System: Disposal of Coal Combustion
Residuals from Electric Utilities
Amendments to the National Minimum Criteria (Phase One)

Administrator Pruitt:

The Commonwealth of Virginia submits the following comments regarding the U.S. Environmental Protection Agency's (EPA) proposed rulemaking "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Amendments to the National Minimum Criteria (Phase One)."

This rulemaking proposes amendments to the final "Disposal of Coal Combustion Residuals from Electric Utilities" rule (EPA CCR Rule) signed in 2014 which, as EPA notes, established "national minimum criteria for existing and new coal combustion residuals (CCR) landfills and existing and new CCR surface impoundments." As identified by EPA, the original 2014 EPA CCR Rule provides a "comprehensive set of requirements for the safe disposal of CCRs."

Virginia strongly objects to any revision of EPA's established minimum criteria for the disposal of CCR that will be less protective of human health and the environment than existing requirements. Virginia is currently working to ensure the proper operation and closure of several CCR units in a manner that will protect our groundwater and surface water resources including the evaluation of the potential for excavation of CCR from existing CCR units within the Chesapeake Bay watershed for beneficial use or recycling. It is critical that EPA not hinder Virginia's ability to close sites in the most protective manner by revising the CCR rule in ways that undermine the established EPA framework and minimum standards.

Prior to finalizing any revisions, EPA should carefully consider, review, and ensure that no revision results in the creation of a less protective standard than previously established, particularly with respect to the protection of groundwater and surface water.

Furthermore, EPA should ensure that any revision maintains or enhances the elements of public notice and involvement for decisions regarding these CCR units through the existing record keeping and publicly available website posting requirements.

Virginia incorporated the 2014 EPA CCR Rule into its existing Virginia Solid Waste Management Regulations in 2016. In doing so, Virginia ensured that CCR units throughout the Commonwealth would not only be required to comply with the EPA CCR Rule but also be subject to state oversight and enforcement of its provisions.

This approach also reconciled existing regulations and ensured that in Virginia, the more stringent requirement among state and federal law would apply. Additionally, this approach incorporated important elements of Virginia's existing solid waste permitting program including technical reviews of proposed actions, additional technical standards, and public participation prior to any final decisions or approvals regarding CCR units.

Additionally, in advance of this proposed EPA rulemaking, Virginia has included boron in its final and proposed groundwater monitoring programs for CCR units as an Assessment Monitoring constituent (Appendix IV) that could trigger closure or corrective action. Virginia supports the addition of boron to Appendix IV of the CCR rule through this rulemaking, in response to the remand by the U.S. Court of Appeals for the D.C. Circuit.

To date, Virginia has sought to ensure the necessary regulatory oversight of CCR facilities to ensure protection of public health and the environment. Without a commitment of a federal permitting program and direct oversight by EPA, Virginia cannot support any revision to the EPA CCR rule that would allow owners or operators so-called "flexibilities." Without federal backing, Virginia believes that "flexibility" simply means an excuse to pollute in the absence of adequate state programs.

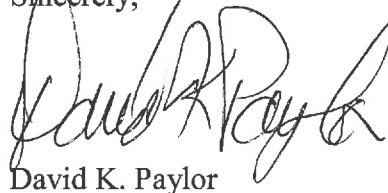
The *potential* for EPA oversight and enforcement alone is not sufficient to provide the critical independent regulatory review necessary to protect human health and environment. This insufficiency is particularly obvious for decisions involving crucial elements of the EPA CCR Rule framework such as the establishment of alternative groundwater protection standards and the necessity of groundwater corrective action. The utilization of third-party technical experts by CCR unit owners and operators does not provide the same independent assurances as a permitting program technical review and is not a sufficient backstop to ensure appropriate decision making with respect to proposed alternatives.

Even if EPA chooses to move forward with a rulemaking action that results in diminished oversight or allows an alternative analysis devoid of accountability, Virginia will maintain its stringent CCR program to ensure adequate review of such decisions. However, our ability to enforce these fair and strong standards will be much greater if EPA maintains its commitment to them.

Virginia has experienced the harm to *our* natural resources that can occur when legacy CCR units are poorly managed outside of our state borders. We cannot support any proposed revision by EPA that would create less protective technical standards nationwide for the disposal of CCR. Virginia is committed to ensuring the proper disposal of CCR to protect human health and the environment. Virginia urges EPA to support this goal by rejecting any regulatory revisions that would weaken the protections afforded in the existing CCR Rule.

The Commonwealth of Virginia appreciates EPA's attention and consideration of the above in its proposed rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Paylor", written over a horizontal line.

David K. Paylor

DKP:ewf